

DEPARTMENT OF INDUSTRIAL RELATIONS

INDUSTRIAL MEDICAL COUNCIL

P. O. Box 8888

San Francisco, CA 94128

Tel. No.: (650) 737-2700 or 1-(800) 794-6900 Fax No.: (650) 737-2711

**Title 8. Industrial Medical Council****Notice of Proposed Rulemaking**

The Industrial Medical Council ("IMC") proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The IMC proposes to amend section 46 in Title 8 of the California Code of Regulations (CCR). This section governs the conduct of medical-legal examinations of the neuromusculoskeletal system.

Public Hearing

The IMC will hold one public hearing on the adoption of Industrial Medical Council regulations relating to the evaluation of injuries to the neuromusculoskeletal system applicable to all physicians performing medical-legal evaluations in the workers' compensation system.

The hearing will be on the following date at the following location:

Day: November 18, 2002
Time: 1:00pm to 3:00pm
Place: Ramada Inn
245 South Airport Blvd.
South San Francisco, CA 94080

At the hearing, any person may present statements or arguments orally or in writing to the proposed action described in the informative digest. It is requested but not required that anyone wishing to make public comment at the hearing submit comments in writing to the IMC before the date of the hearing.

All written comments should be mailed to James D. Fisher, Esq., P.O. Box 8888 San Francisco, CA 94128 and must be received by the IMC no later than 5:00 p.m., November 25, 2002 or may be submitted at the public hearing by close of session. Comments by fax will be accepted. Fax No. (650) 737-2989, E-mail address IMCrules@dir.ca.gov.

Authority and Reference

The IMC is undertaking this regulatory action under the authority conferred in Labor Code sections 139, 139.2 and 5307.4. The action will implement, interpret and make specific Labor Code sections 139, 139.2, 4060, 4061, 4061.5 and 4062.

Statement of Necessity

The IMC has determined that the proposed regulations are necessary to the effectiveness of the operation of the QME evaluation process. Labor Code section 139.2 (j) (2) mandates adoption of these regulations by the IMC.

Informative Digest/Policy Statement Overview

The IMC proposes to amend current regulations governing the requirements for the conduct of medical-legal examinations of the neuromusculoskeletal system in the workers' compensation system. This guideline will serve to provide specific instructions to guide physicians in performing medical/legal evaluations of the neuromusculoskeletal system.

The Council oversees the medical aspects of the California Workers' Compensation system and appoints physicians as Qualified Medical Evaluators to perform medical-legal evaluations of injured workers.

The Industrial Medical Council's legislative mandates are set out in Sections 139-139.2 of the California Labor Code. Labor Code section 139.2 (j)(2) requires the Industrial Medical Council (IMC) to promulgate rules and regulations concerning "procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury." The IMC has previously adopted six evaluation protocols concerning various parts of the body. The purpose of these proposed rules is fulfilling the IMC's mandate by issuing evaluation protocols covering examinations of the neuromusculoskeletal system.

The purpose of the changes to the current guideline is to substitute the word "complaint" for the term "symptom" and change the term "impairment" to the term "disability". This proposed change is to make the guideline more compatible with "Evaluation of Industrial Disability" edited by Packard Thurber, Second Edition, Oxford University Press, New York, 1960 (Packard Thurber) and section 9727 of title 8 of the California Code of Regulation, which defines subjective disability for purposes of workers' compensation. The IMC proposes other minor changes to this section to clarify the procedures used by physicians in examining injured workers. In section two of the existing guideline, the IMC proposes to correct a spelling error and minor non-substantive changes to clarify the procedures used by physicians in examining injured workers.

Finally, the IMC seeks to add a new section titled "Neck Injuries With or Without Radiating Symptoms Physical Examination." There are no current guidelines in the other protocols, which address the evaluation of cervical spine injuries. This section provides guidance to physicians about the evaluation techniques and tests that physicians may use to determine the nature and extent of disability to an injured worker who has sustained cervical spine injury.

Consideration of Alternatives

The IMC must determine that no reasonable alternative considered by the IMC or that has otherwise been identified and brought to the attention of the IMC to the proposed regulation that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

The IMC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

Local Mandates

These proposals if adopted will not mandate any programs upon local agencies or school districts.

Effect on Housing Costs

The IMC has made an initial determination that the proposed regulations will have no effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses

The IMC made an initial determination that the proposed regulatory determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California business to compete with business in other states.

Cost or Savings in Federal Funding to State

None. The proposed regulations will not affect any Federal funding to the State.

Costs or Savings to State Agencies

The proposed regulations will not impose costs on state agencies. Any such costs are non-reimbursable, however, since the requirement that employers contribute to the funding of California's workers' compensation programs is not unique to state agencies and applies to all employers alike, both public and private.

Potential Cost impact on Private Persons or Businesses directly effected

The IMC is not aware of any cost impacts that a representative private person or business would necessary incur in reasonable compliance with the proposed action has determined that the proposed regulations may have an insignificant impact on private persons or businesses.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion.

The IMC has determined that these regulations will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing jobs within the State of California, or the expansion of existing businesses within the State of California.

Other Non Discretionary Costs or Savings imposed on Local Agencies

None. There are no non-discretionary costs or savings.

Small Business

The proposed regulatory action may affect small business.

Contact Persons and the Availability of Statement of Reasons and Text of Proposed Regulations

The text of the proposed regulations may be obtained upon request from the IMC. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is prepared and available from the IMC. The rulemaking file is available for public inspection at 395 Oyster Point Blvd., Suite 102, So. San Francisco, Ca. 94080. When prepared and available, the final statement of reasons can be requested from the contact person. Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, upon which the rulemaking is based to:

Annadesa Gregorio (650) 737-2034
James Fisher, Esq. (650) 737-2049
Department of Industrial Relations
Industrial Medical Council
395 Oyster Point Blvd., Ste. 102
South San Francisco, CA 94080

Inquiries concerning the substance of the proposed action may be directed to:

James D. Fisher, Esq (650) 737-2049
Anne Searcy, M.D. (650) 737-2006
Department of Industrial Relations
Industrial Medical Council
395 Oyster Point Blvd., Ste. 102
South San Francisco, CA 94080

Availability of Changed or Modified Text

After holding the hearings and considering all timely and relevant comments received, the IMC may adopt the proposed regulations substantially as described in this notice. If the IMC makes modifications that are sufficiently related to the originally proposed text, the IMC will make the modified text with the changes clearly indicated available to the public. The text will be available for at least 15 days before the IMC adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Annadesa Gregorio at the address indicated above. The IMC will accept written comments on the modified regulations for 15 days after the date the text is made available.

Final Statement of Reasons

Upon written or e-mail request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact persons listed above.

Automatic Mailing

The IMC will automatically mail a copy of this Notice, including the Informative Digest, to those interested persons on the IMC's mailing list. When adopted, the regulations as amended will appear at California Code of Regulations at Title 8, Sections 46.1.

Web Access

A copy of this Notice, the Initial Statement of Reasons, and the Text of the proposed regulations can be obtained at the IMC's website at <http://www.dir.ca.gov/IMC/imchp.html>. On the left side of the page, you will see a link to "Proposed Regulations." Click on the link and you will be taken to the page containing the proposed regulation in this Notice. Alternatively, a copy of this Notice, the Initial Statement of Reasons, and the Text of the proposed regulations can be obtained at the website of the Department of Industrial Relations at <http://www.dir.ca.gov/>. In the middle of the page you will see a link "Rulemaking—Proposed Regulations." Click on the link and you will be taken to the page containing the proposed regulation in this Notice.